No. 23

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IN THE 1963

SUPREME COURT OF THE UNITED STATES.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for Themselves Jointly and Severally, and for All Others Similarly Situated, Plaintiffs-Appellees,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, Intervenors-Appellees,

DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., Intervenors-Appellants,

JOHN W. McCONNELL, JR., JOSEPH M. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervenors-Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; and B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama, and FRANK PEARCE, Judge of Probate of Marion County, Alabama, Defendants.

Appeal From the United States District Court for the Middle District of Alabama, Northern Division.

Civil Action. No. 1744-N.

AMENDMENT TO MOTION TO DISMISS OR AFFIRM.

CHARLES MORGAN, JR.,
1512 Comer Building,
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ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street., CEntral 1-4477.

IN THE

SUPREME COURT OF THE UNITED STATES.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for Themselves Jointly and Severally, and for All Others Similarly Situated, Plaintiffs-Appellees,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, Intervenors-Appellees,

DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., Intervenors-Appellants,

JOHN W. McCONNELL, JR., JOSEPH M. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervenors-Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; and B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama, and FRANK PEARCE, Judge of Probate of Marion County, Alabama, Defendants.

Appeal From the United States District Court for the Middle District of Alabama, Northern Division.

Civil Action. No. 1744-N.

AMENDMENT TO MOTION TO DISMISS OR AFFIRM.

Plaintiffs-Appellees, M. O. Sims et al., and Intervenors-Appellees, R. E. Farr et al. (all hereinafter called "plaintiffs") respectfully amend their motion to dismiss or affirm and argument in support thereof as hereinafter indicated.

Plaintiffs amend the Motion so as to read as follows:

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, Plaintiffs move that the Judgment and Decree of the District Court be affirmed or that the several appeals be dismissed on the following grounds:

(1) As to all appeals, the questions presented are so unsubstantial as not to warrant further argument;

(2) As to the appeal of Intervenors-Appellants John W. McConnell, Jr., et al., the appeal is not within the jurisdiction of this Court, not having been taken in time as provided in Title 28, U. S. C., Sec. 2101 (b);

(3) As to the appeal of Intervenors-Appellants David J. Vann and Robert S. Vance, the appeal is not within the jurisdiction of this Court, the Jurisdictional Statement of these Intervenors-Appellants not conforming to Rule 15 (g) of the Revised Rules of the Supreme Court of the United States in that it does not contain a statement showing the matters in which it is contended that the District Court abused its discretion.

ARGUMENT.

Plaintiffs respectfully would add to the Argument contained in the original Motion matters in support of the second and third grounds of the amended Motion.

The judgment and decree appealed from is interlocutory and not final. Submission was made on Plaintiffs' motion for interlocutory injunction. The Court concluded its opinion of July 21, 1962, with these words:

> "It is this Court's further intention to retain jurisdiction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both House of the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case."

The Decree of July 25, 1962, entered pursuant to its opinion of July 21, also shows that the judgment is interlocutory, not final.

The judgment being interlocutory, the time for appeal was 30 days, not 60 days. Title 28, U. S. C., Section 210(b). Intervenors-Appellants McConnell et al., did not file their Notice of Appeal (Cross Appeal) until September 22, 1962, more than 30 days after the entry of the decree of the District Court. In fact, the Notice of Appeal has not been accepted by the Clerk of the District, as shown by his letter of September 24, 1962, to Mr. McCon-

nell, a copy of which was addressed to the Clerk of the Supreme Court of the United States.

Intervenors-Appellants Vann and Vance did not include in their jurisdictional statement any showing of the matters in which they contended that the District Court had abused its discretion by the action taken, as required by Rule 15 (9) of the Revised Rules of the Supreme Court of the United States. We argued in the original Motion and Argument that the District Court exercised restraint, giving the Legislature of the State of Alabama further opportunity to properly apportion itself. Nowhere in the Jurisdictional Statement of Intervenors-Appellants Vann and Vance is there any statement or argument showing abuse of this judicial decision of restraint.

Plaintiffs have indicated their approval of the District Court's interlocutory judgment and have argued its wisdom. But without complying with Rule 15 (9), Intervenors-Appellants Vann and Vance cannot raise their questions for decision by this Court.

Respectfully submitted,

.....
CHARLES MORGAN, JR.,

.....
GEORGE PEACH TAYLOR,

.....
JEROME A. COOPER.

Certificate of Service.

I, George Peach Taylor, one of the attorneys for Intervenors-Appellees, M. O. Sims et al., as a member of the

bar of the Supreme Court of the United States, hereby certify that on the .... day of November, 1962, I served copies of the foregoing statement amending plaintiffs' motion to dismiss or affirm on the several Appellants thereto by mailing copies in duly addressed envelopes, with first-class postage pre-paid, to their respective attorneys of records as follows:

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